

ASSEMBLY BILL

No. 1229

Introduced by Assembly Member Frommer

February 23, 2001

An act to add Section 330d to the Penal Code, relating to gambling.

LEGISLATIVE COUNSEL'S DIGEST

AB 1229, as introduced, Frommer. Gambling: prohibited online gambling games.

(1) Existing law prohibits, with the exception of specified games conducted on Indian lands, banking or percentage games played with cards, dice, or devices, including roulette, faro, and twenty-one, lottery games, other than charitable bingo, raffles, and the games of the California State Lottery, the operation, possession, sale or control of slot machines, as defined, and sports wagering and other forms of bookmaking and pool selling, other than licensed parimutuel wagering on horse races, and provides that any person who operates or bets at these prohibited gambling games is guilty of a crime and is punishable by a misdemeanor or felony, as specified.

This bill would state findings and declarations of the Legislature with regard to online gambling games, and would provide that it is unlawful for any person to operate or bet against any prohibited online gambling game, as defined, for money, checks, credit, or any other representative of value. This bill would provide that every person who operates or offers for play any prohibited online gambling game to any person physically located in this state at the time of the transaction, or who operates such a game from a host server, as defined, that is physically located in this state at the time of the transaction, is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to

exceed 90 days, a fine not to exceed \$1,000 per transaction, as defined, or by both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that every person or entity who aids and abets another person who is physically located in this state to play or bet at any prohibited online gambling game in violation of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed \$1,000 per violation, or by both that fine and imprisonment. This bill would provide that these provisions shall not apply with respect to advertisements that are not specifically directed towards this state and which contain adequate disclosure of the illegality of these games, nor to Internet service providers, web pages and search engines, or other indexes, networks, or network equipment which act as mere functional intermediaries between a patron and an online gambling enterprise and which do not reasonably constitute an advertisement or promotion of that enterprise. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that every person who plays or bets at or against a prohibited online gambling game while physically located within this state is guilty of an infraction punishable by a fine not to exceed \$100 per transaction. By creating a new crime, this bill would impose a state-mandated local program.

This bill would also provide that notwithstanding any other provision of law, the Attorney General is expressly authorized to enforce these provisions, and in addition to bringing criminal actions shall have the authority to file civil actions, issue cease and desist letters, and take other actions as necessary to maximize compliance with these provisions by online gambling enterprises, intermediaries, and individual citizens of this state, and would specifically authorize the Attorney General to review electronic, print, and other advertisements of online gambling enterprises for accuracy, and demand that advertisements appearing in this state disclose that these online games are illegal in this state. This bill would provide that the authority thereby provided to the Attorney General shall not be construed to limit the authority of a district attorney to enforce these provisions.

This bill would provide that its provisions are severable, and that if any of its provisions or its applications are held invalid, that invalidity shall not affect other provisions or applications that can be given effect.



(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

3 (1) Online gambling threatens the health, safety, and welfare of
4 the citizens of this state, because, unlike controlled gambling
5 conducted within licensed gambling establishments and tribal
6 casinos, online gambling is completely unregulated.

7 (2) The unregulated nature of online gambling enterprises,
8 combined with the fact that many online gambling providers are
9 located beyond the criminal jurisdiction of this state or of the
10 United States, poses an unacceptable risk of fraudulent business
11 practices to patrons of these establishments.

12 (3) Due to the anonymous nature of the Internet, online
13 gambling establishments are unable to accurately assess the age or
14 identity of online patrons, and thus these enterprises facilitate
15 illegal gambling by minors and other persons prohibited from
16 engaging in gambling.

17 (4) Online gambling enterprises routinely and incorrectly
18 assert that persons in this state can legally participate in online
19 gambling games, and thus these enterprises engage in false and
20 misleading advertising.

21 (b) It is the intent of the Legislature in enacting this act to
22 remove any ambiguity as to the illegality of online gambling in this
23 state.

24 SEC. 2. Section 330d is added to the Penal Code, to read:

25 330d. (a) Notwithstanding any other provision of law, and in
26 addition to the prohibitions and limitations on gambling contained
27 in this chapter and in Chapter 9 (commencing with Section 319),
28 it is unlawful for any person to operate or bet at or against any

1 prohibited online gambling game, as defined in subdivision (f), for
2 money, checks, credit, or any other representative of value.

3 (b) Every person who deals, carries on, opens or causes to be
4 opened, or who conducts, operates, or offers for play any
5 prohibited online gambling game played for money, checks,
6 credit, or any other representative of value, to any person that he
7 or she knows or has reason to know is physically located within
8 this state at the time of the transaction, is guilty of a misdemeanor
9 punishable by imprisonment in a county jail not to exceed 90 days,
10 a fine not to exceed one thousand dollars (\$1,000) per transaction,
11 or by both that imprisonment and fine.

12 (c) Every person who deals, carries on, opens or causes to be
13 opened, or who conducts, operates, or offers for play any
14 prohibited online gambling game played for money, checks,
15 credit, or any other representative of value, from a host server, as
16 defined in subdivision (g), that is physically located within this
17 state at the time of the transaction, is guilty of a misdemeanor
18 punishable by imprisonment in a county jail not to exceed 90 days,
19 a fine not to exceed one thousand dollars (\$1,000) per transaction,
20 or by both that imprisonment and fine.

21 (d) (1) Every person or entity who aids and abets another
22 person who is physically located in this state to play or bet at any
23 prohibited online gambling game in violation of this section is
24 guilty of a misdemeanor punishable by imprisonment in a county
25 jail not to exceed 90 days, a fine not to exceed one thousand dollars
26 (\$1,000) per violation, or by both that fine and imprisonment.

27 (2) This subdivision shall not apply with respect to
28 advertisements that are not specifically directed towards the
29 residents of this state and which contain adequate disclosure of the
30 illegality of these games, nor shall this subdivision apply with
31 respect to Internet service providers, web pages containing
32 hypertext links, web search engines, networks, routers, hubs, or
33 other directories, indexes, devices, or equipment which act as mere
34 functional intermediaries between a patron and an online
35 gambling enterprise and which do not reasonably constitute an
36 advertisement or promotion of that enterprise.

37 (e) Every person who plays or bets at or against any prohibited
38 online gambling game for money, checks, credit, or any other
39 representative of value, while that person is physically located

1 within this state, is guilty of an infraction punishable by a fine not
2 to exceed one hundred dollars (\$100) per transaction.

3 (f) A prohibited online gambling game, for purposes of this
4 section, includes, but is not limited to, any of the following games
5 and any common variations thereon or facsimiles thereof, as well
6 as any banking or percentage game played with dice, cards, or
7 devices, that is conducted, operated, or offered for play over the
8 Internet for money, checks, credit, or any other representative of
9 value:

10 (1) Craps.

11 (2) Roulette.

12 (3) Blackjack or twenty-one.

13 (4) Slot machines.

14 (5) Poker, including stud poker, draw poker, Caribbean stud
15 poker, or Pai gow poker.

16 (6) Baccarat.

17 (7) Bingo, including bingo pulltab games.

18 (8) Sportsbook wagering, including wagering on the outcome,
19 statistics, or any other aspect of a sporting event, including
20 wagering on a horse race.

21 (9) Lottery games, other than games lawfully conducted by the
22 California State Lottery.

23 (g) A host server, for purposes of this section, means the
24 computer or network of computers on which an online gambling
25 game is operated. Host server does not include any computer, hub,
26 or other device, or any independent computer network, that acts as
27 an intermediary in the transfer of Internet Protocol (IP) packets to
28 and from the host server, provided that the intermediary device is
29 not owned or controlled by the person or entity, or a subsidiary
30 thereof, that owns or controls the host server.

31 (h) A transaction, for purposes of this section, means each
32 transfer of funds or other valuable consideration for use in, or in
33 connection with, the making of a wager, series of wagers, or parlay
34 wager.

35 (i) Notwithstanding any other provision of law, the Attorney
36 General is expressly authorized to enforce this section, and in
37 addition to bringing criminal actions shall have the authority to file
38 civil actions, issue cease and desist letters, and take other actions
39 as necessary to maximize compliance with these provisions by
40 online gambling enterprises, intermediaries, and individual

1 citizens of this state. The Attorney General is specifically
2 authorized to review electronic, print, and other advertisements of
3 online gambling enterprises for accuracy, and may demand that
4 advertisements appearing in this state disclose that these online
5 games are illegal in this state. Nothing in this subdivision shall be
6 construed to limit the authority of a district attorney to enforce the
7 provisions of this section.

8 (j) The provisions of this section are severable. If any provision
9 of this section or its application is held invalid, that invalidity shall
10 not affect other provisions or applications that can be given effect
11 without the invalid provision or application.

12 SEC. 3. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

